OCC CONFIRMS NATIONAL BANKS CAN HOLD (CERTAIN) STABLECOIN RESERVES

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U.S. Policy and Regulatory Alert

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On 21 September, the Office of the Comptroller of the Currency (OCC) issued Interpretive Letter Number 1172[1] (Letter) confirming that national banks and federal savings associations (collectively, national banks) can hold certain types of deposits that serve as reserves of certain types of stablecoins. The Letter follows only two months after the OCC's decision that national banks may provide custodial services of cryptocurrencies broadly.

According to the Letter, a national bank may hold deposits of fiat currency that serve as reserves of a stablecoin provided:

- the reserves are to be redeemed on a 1:1 basis;
- the reserves are denominated in a single fiat currency;
- the national bank "verifies at least daily that reserve account balances are always equal to or greater than the number of the issuer's outstanding stablecoins;" and
- the issuer of the stablecoin has the stablecoin reserve held in a hosted digital wall

Accordingly, the Letter does *not* apply to stablecoins backed by multiple fiat currencies, other cryptocurrencies, commodities, other assets, or a combination thereof, nor to stablecoins whose value floats within a range via active or passive (via algorithm) management. Additionally, the Letter does *not* address a national bank's "authority to support stablecoin transactions involving un-hosted wallets."

If they choose to exercise this authority, the Letter reminds national banks that their obligations under the Bank Secrecy Act (BSA), such as due diligence, customer identification (including beneficial ownership), and monitoring for suspicious activities, among others, would apply to eligible stablecoin issuers. For guidance, the Letter refers banks to OCC Bulletin 2016-10[2], noting that holding deposits for stablecoin issuers "is analogous… [to] prepaid cards distributed and sold by third-party program managers…."

The Letter also advises national banks to implement an appropriate risk management framework. In particular, national banks should focus on the applicability of pass-through deposit insurance (reserve accounts can be structured as deposits of the issuer of the holder) and corresponding disclosures; the ability to verify that reserves are of sufficient value; liquidity risk; and clear assignment of duties and rights per a written contract (including audit authority as exists "in the analogous context of prepaid cards distributed and sold by third-party program managers," redemption rights, and the scope of bank's services).

While a constructive step forward, the Letter's limited scope is notable. First, although the vast majority of the stablecoin market (per market capitalization) would be covered, several prominent stablecoins are excluded by

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virtue of being cryptocurrency- or commodity-backed coins. Second, stablecoins backed by a basket of currencies, as Libra was originally designed to be, are not covered. According to the OCC, “the current stablecoin activities discussed in this letter would not contribute to the global and systemic risks noted by the Financial Stability Board in its recent consultation.” The implication is that other categories of stablecoins might pose such a risk. Third, the OCC is limiting services to entities regulated by the Financial Crimes Enforcement Network (FinCEN). Per FinCEN's May 2019 Guidance[3], hosted wallets are subject to the BSA whereas non-hosted wallets are not.

The OCC continues to press forward with favorable, albeit cautious, guidance for the cryptocurrency ecosystem. We will continue to monitor and advise as new developments arise.

FOOTNOTES

[1] Interpretive Letter No. 1172, Office of the Comptroller of the Currency (Sept. 21, 2020).

[2] OCC Bulletin 2016-10, Prepaid Cards: Interagency Guidance to Issuing Banks on Applying Customer Identification Program Requirements to Holders of Prepaid Cards (Mar. 21, 2016).

[3] FIN-2019-G001, Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, Financial Crimes Enforcement Network (May 9, 2019).

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